

# Notarisation in the UAE – Abu Dhabi notarisation revolutionised

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“The purpose of this decision is to ... [h]ighlight the pioneering role of Abu Dhabi in introducing the first English-language notary service in the region.”

(Article (1)(4) of Abu Dhabi Judicial Department Resolution No. 38 of 2023)

## Introduction

In the very latest of positive developments in the legal and administrative landscape of the UAE, and in a Middle East first, Abu Dhabi has overhauled its longstanding position of only providing notarisation services in Arabic by paving the way for an exclusively English, online notarisation service to expedite future commercial transactions in the capital.

## The current, soon to be overhauled, position on notarisation in the UAE (and why it can create headaches on commercial transactions)

Notarisation of documents is an essential step in the consummation of many corporate arrangements in the UAE. For instance, in a secured financing where the security package includes a pledge of shares over a UAE company and in order to be registered with the UAE authorities, the execution of the share pledge must be notarised before a UAE notary (online or in-person). The same can be said for many international transactions involving UAE companies, where foreign law documents may need to be either just notarised or both notarised and, in turn, legalised, in order to be registered abroad. As the UAE is not a signatory to the 1961 Hague Convention (the **Hague Convention**), having a document apostilled, which is essentially an expedited form of legalisation accepted between states where the Hague Convention is in force, is not an option currently available in the UAE, nor is it expected to be available any time soon.

Pursuant to Article 16 (Language of the Act) of Abu Dhabi Law No. 11 of 2017 On the Notary Public in the Emirate of Abu Dhabi (**Article 16**), all documents need to be in Arabic in order to be notarised by an Abu Dhabi notary. As a matter of practice, dual Arabic-English documents are also commonly accepted for notarisation by all UAE notaries. This Arabic language requirement is prevalent across the GCC and wider Middle East and can create quite a few

headaches, delays and subsequent costs on commercial transactions where the documentation for the rest of the transaction is in English. For instance, it can be very tricky to get a foreign language standard form notarised (for instance, a standard form ship mortgage release form prescribed by a foreign ship registry in English or another foreign language) where that standard form must be executed and notarised in precisely the form and language prescribed. A translated Arabic or dual language version of the standard form, which is what is needed by a local notary in the UAE, will not be accepted by the foreign authorities, as such a translated version would not be in the precise prescribed form that such foreign authorities require to be lodged with it.

Such issues can be compounded where a signatory lacks the ability in its authorisations (usually a power of attorney, which for an Abu Dhabi resident or company would be executed before an Abu Dhabi notary and, as per its terms and the requirements of Abu Dhabi notaries, will be valid for a maximum of two years before needing to be refreshed (although the practice before notaries elsewhere in the UAE differs, such as in Dubai where powers of attorney for more than the maximum two years typically permitted by Abu Dhabi notaries are more commonly accepted)) to delegate signing authority to third parties. Such delegation, where available, is one common method of circumventing the Arabic language restriction that might otherwise apply to a non-Arabic language standard form that needs to be notarised (for instance, by appointing a person with a presence in the relevant foreign jurisdiction to execute the relevant standard form on behalf of the UAE entity concerned). The inability to delegate signing authority is particularly prevalent in large institutions that lie at the centre of many commercial transactions (such as banks), not just in the UAE but in many other jurisdictions. Although quite restrictive, the reasons for the reluctance to allow authorised signatories to delegate signing authority to unnamed individuals are obvious. Signing authority is typically only given to the most trusted employees of such institutions and, as additional protection, subject to a requirement that such attorneys act jointly for particularly important matters (as opposed to individually) and, in some instances for additional protection, subject to carefully prescribed financial limits (with execution of documents involving potentially very high liabilities being assumed or released being the reserve of only the most senior attorneys expressly set out in the institution's power of attorney). For a specific transaction, it is usually impractical for such large institutions to put a new power of attorney in place on a piecemeal basis. In such instances, it may be necessary for legal counsel to seek dispensation from the relevant foreign authority's usual notarisation requirements on the grounds of inability to pursue any other option. However, such pleadings may fall on deaf ears or take a very long time to be heard and resolved, generating related costs and risks, as well as plenty of frustration for what on its face should be a very straightforward administrative matter.

The requirement for documents to be in Arabic also introduces translation delays and costs, as well as the risk of introduction of translation errors into what might, in its original English form, be a very carefully drafted and negotiated document (noting that, in court proceedings in the UAE, the Arabic language version will generally prevail and, while an Arabic translation may be quality checked, it is not uncommon for parties to rely on legal translation services with varying English-to-Arabic translation accuracy and mistakes can be made). Where the documentation for a matter is in English, the ability to notarise such documents in their original English language would avoid all such issues. Hitherto that service has not been available anywhere in the UAE, nor indeed in the wider Middle East region.

## What is changing?

While containing the primary Arabic language requirement for notarisation of documents, Article 16 also provides for the possibility of foreign language notary services in Abu Dhabi, subject to a decision of the Chairman of the Abu Dhabi Judicial Department being issued to provide for them. Some six years on, and in a very positive move for Abu Dhabi and the UAE in general, on 12 October 2023 Sheikh Mansour bin Zayed Al Nahyan, Vice President, Deputy Prime Minister and Chairman of the Presidential Court and Chairman of Abu Dhabi Judicial Department has now exercised that discretion in the form of Abu Dhabi Judicial Department Resolution No. 38 of 2023 (the **AD Notarisation Decision**). In a Middle East first, the AD Notarisation Decision establishes a judicial services bureau in

Abu Dhabi that provides its services exclusively in English. The following two articles are particularly noteworthy:

- Article 3 (Office responsibilities):

"... All procedures, processes and forms used by the office will be exclusively in English. This includes, but is not limited to, letters, communications with stakeholders and all meetings held with the attestation officers."

- Article 5 (Types of documents attested or notarised in English):

"The English-language notary service will cover the attestation of contracts and documents written in English, including but not limited to:

1. All types of contracts
2. Declarations and affidavits
3. Settlement agreements
4. All types of power of attorney
5. Signature authorisation
6. Board decisions, minutes of meeting and all documents generated by public and private entities due to or in the course of their operations."

Consistent with the spirit of the AD Notarisation Decision and in a positive sign of things to come, the decision itself was published in both English and Arabic. Clearly, the AD Notarisation Decision is expected to have a very wide remit. Article 4 (Allowing external notaries to attest English documents) of the AD Notarisation Decision extends that possible remit further still, by providing for the same English language service to also be provided by private or government notaries that have been licensed to do so, although this will require a separate direction to be published in due course by the Private Notary Affairs Committee of the Abu Dhabi Judicial Department. No doubt, this will all come in very handy for those conducting business in English in the capital in the future.

## Conclusion

While parties in the UAE have previously been restricted to using an exclusively Arabic notarisation service, an English notarisation service in Abu Dhabi is a very welcome development under Abu Dhabi law and should greatly expedite many situations which hitherto have sometimes been slow and costly to administer. The AD Notarisation Decision will come into force once published in the Official Gazette, which is expected to be soon given that the website for the service is already up and running and clarifies further that the service will be made available digitally online, with [englishnotary@adjd.gov.ae](mailto:englishnotary@adjd.gov.ae) as the specified email address to use the service. It remains to be seen how it will be implemented in practice, but hopefully the AD Notarisation Decision will be exercised liberally in accordance with its plain English meaning as set out above. Whilst it is expected that these English language services will only be available to residents and companies in Abu Dhabi in the first instance (the AD Notarisation Decision is a decision of the Abu Dhabi Judicial Committee and therefore does not bind the judiciaries of the other Emirates), it is submitted that it would make sense for other Emirates in the UAE to quickly follow suit to keep things in harmony and avoid creating a two-tiered system of notarisation across the UAE. In any case, given the prevalence of the English language in international commercial dealings, this is another positive development in the legal and broader commercial landscape of the UAE which, like the move to a Monday to Friday working week, helps to bring the UAE into line with common international business practice and maintains its standing as a leading place to do business in the Middle East.

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